



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 956**

**[Doc. No.: AMS-SC-18-0028; SC-18-956-1]**

**Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Proposed Amendments to the Marketing Order (No. 956)**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule invites comments on proposed amendments to Marketing Order No. 956, which regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The proposed amendments would change the Walla Walla Sweet Onion Marketing Committee's (Committee) size, quorum, and voting requirements. It would also change the staggered term limits so that one-half of the producer and handler member terms expire every two fiscal periods instead of one-third every three fiscal periods.

**DATES:** Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be

sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Julie Santoboni, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email:

Geronimo.Quinones@ams.usda.gov or

Julie.Santoboni@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Part 956 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of sweet onion producers and handlers operating within the area of production and a public member.

Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued and producers would be allowed to vote for or against the proposed Order amendments. AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order

13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place

of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in

the "Initial Regulatory Flexibility Analysis" section of this proposed rule.

The proposed amendments were unanimously recommended by the Committee following deliberations at two public meetings held on November 14, 2017 and March 3, 2018. The proposals would amend the Order by changing the Committee's size, quorum, and voting requirements. This action would also change the staggered term limits so that one-half of the producer and handler member terms expire every two fiscal periods instead of one-third every three fiscal periods.

#### Proposal 1 - Reduce Committee Size

Section 956.20 provides that the Committee consists of ten members, six of whom shall be producers, three of whom shall be handlers, and one public member. This proposal would amend § 956.20 by reducing the size of the Committee from ten to seven members, four of whom shall be producers, two of whom shall be handlers, and one public member. The requirement that each member have an alternate with the same qualifications as the member would remain unchanged.

Since promulgation of the Order in 1995, the number of Walla Walla sweet onion producers and handlers operating in

the industry has decreased, which makes it difficult to find enough members and alternates to fill all the positions on the Committee. Decreasing the Committee's size from ten members to seven members would make it more reflective of today's industry. Having a smaller size committee would enable it to fulfill membership and quorum requirements. These changes should help the Committee streamline its operations and increase its effectiveness.

Proposal 2 - Revise Term of Office and Staggered Term Limits

Section 956.21 requires Committee members and their alternates to serve for three years in staggered terms with one-third of the terms expiring each year.

This proposal would change § 956.21 by revising the terms of office for the producer and handler members from three years to two years beginning on June 1 so that one-half of the Committee changes every year. The staggered terms would also change so that one-half of the producer and handler member terms expire every two fiscal periods instead of one-third of the producer and handler members terms expiring every three fiscal periods. The proposed term limit changes would only apply to producer and handler



members, and the public member term would remain three years.

### Proposal 3 - Revise Quorum and Voting Requirements

Currently, Section 956.28(a) states that six members of the Committee shall constitute a quorum, and six concurring votes shall be required to pass any motion or approve any Committee action, except that recommendations made pursuant to § 956.61 shall require seven concurring votes.

The proposed changes would modify § 956.28 to state that four rather than six members would constitute a quorum and four rather than six concurring votes would be required to pass any motion to approve any Committee action, except for recommendations made pursuant to § 956.61, which would require five rather than seven concurring votes. These changes would help to streamline the Committee's operations and increase its effectiveness.

### **Initial Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small

entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight handlers of Walla Walla sweet onions subject to regulation under the Order and approximately 15 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

The Committee reported that approximately 390,000 50-pound bags or equivalents of Walla Walla sweet onions were shipped into the fresh market in 2017. Based on information reported by USDA's Market News Service, the average 2017 marketing year f.o.b. shipping point price for

the Walla Walla sweet onions was \$14.90 per 50-pound equivalent. Multiplying the \$14.90 average price by the shipment quantity of 390,000 50-pound equivalents yields an annual crop revenue estimate of \$5,811,000. The average annual revenue for each of the eight handlers is therefore calculated to be \$726,375 (\$5,811,000 divided by eight), which is considerably less than the Small Business Administration threshold of \$7,500,000. Consequently, all the Walla Walla sweet onion handlers could be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Walla Walla sweet onions for the 2012 through 2016 marketing years is \$15.27 per 50-pound equivalent. NASS has not released data regarding the 2017 marketing year at this time. Multiplying the 2012-2016 marketing year average price of \$15.27 by the 2017 marketing year shipments of 390,000, 50-pound equivalents yields an annual crop revenue estimate of \$5,955,300. The estimated average annual revenue for each of the 15 producers is therefore calculated to be approximately \$397,020 (\$5,955,300 divided by 15), which is less than the

Small Business Administration threshold of \$750,000. In view of the foregoing, the majority of Walla Walla sweet onion producers, and all of the Walla Walla sweet onion handlers, may be classified as small entities.

The proposed amendments would change the Committee's size, quorum, and voting requirements. They would also change the staggered term limits so that one-half of the producer and handler member terms expire every two fiscal periods instead of one-third every three fiscal periods.

The Committee's proposed amendments were unanimously recommended at two public meetings on November 14, 2017 and March 3, 2018. If these proposals are approved in a referendum, there would be no direct financial effects on producers or handlers. The number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size would make it more reflective of today's industry.

The Committee believes these changes will serve the needs of the Committee and the industry. No economic impact is expected if the proposed amendments are approved because they would not establish any new regulatory

requirements on handlers, nor would they have any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered by the Committee. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements fully, thereby ensuring a more efficient and orderly flow of business.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or

large Walla Walla Valley sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meetings were widely publicized throughout the Walla Walla Valley sweet onion production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the November 14, 2017 and March 3, 2018, meetings were public, and all entities, both large and small, were encouraged to express their views on the proposals.

Finally, interested persons are invited to submit comments on the proposed amendments to the Order, including

comments on the regulatory and information collection impacts of this action on small businesses.

Following analysis of any comments received on the amendments proposed in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the *Federal Register*. A final rule would then be issued to effectuate any amendment favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

## **General Findings**

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 956; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 956 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 956 as hereby proposed to be amended regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 956 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to



subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 956 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced or packed in the production area; and

5. All handling of onions produced or packed in the production area as defined in Marketing Order 956 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this proposed rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

**List of Subjects in 7 CFR Part 956**

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

**PART 956 – SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON**

1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority: 7 U.S.C. 601-674.**

2. Revise § 956.20 to read as follows:

**§ 956.20 Establishment and membership.**

(a) The Walla Walla Sweet Onion Marketing Committee, consisting of seven members, is hereby established. The Committee shall consist of four producer members, two handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

\* \* \* \* \*

3. Revise § 956.21 to read as follows:

**§ 956.21 Term of office.**

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of grower and handler Committee members and their respective alternates shall be two years beginning on June 1. The terms shall be determined so that one-half of the grower membership and one-half of the handler membership shall terminate every year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. One-half of the initial industry grower and handler members and alternates shall serve for a one year term and one-half shall serve for a two year term. The initial, as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two two-year terms. There shall be no such limitation for alternate members.

4. Revise § 956.28 to read as follows:

**§ 956.28 Procedure**

(a) Four members of the Committee shall constitute a quorum, and four concurring votes shall be required to pass any motion or approve any Committee action, except that recommendations made pursuant to § 956.61 shall require five concurring votes.

\* \* \* \* \*

Dated: July 19, 2018.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

**BILLING CODE 3410-02 P**

[FR Doc. 2018-15792 Filed: 7/23/2018 8:45 am; Publication Date: 7/24/2018]